

REMARKS / ARGUMENTS

The present application includes pending claims 1-26, all of which have been rejected. By this Amendment, claims 1-18, 22, and 26 have been amended, as set forth above, to further clarify the language used in these claims and to further prosecution of the present application. Claim 23 has been cancelled. The Applicant respectfully submits that the claims define patentable subject matter.

Initially, the Applicant notes that a goal of patent examination is to provide a prompt and complete examination of a patent application.

It is essential that patent applicants obtain a prompt yet complete examination of their applications. Under the principles of compact prosecution, each claim should be reviewed for compliance with every statutory requirement for patentability in the *initial review* of the application, even if one or more claims are found to be deficient with respect to some statutory requirement. Thus, Office personnel *should* state *all* reasons and bases for rejecting claims in the *first* Office action. Deficiencies should be explained clearly, particularly when they serve as a basis for a rejection. Whenever practicable, Office personnel should indicate how rejections may be overcome and how problems may be resolved. A failure to follow this approach can lead to unnecessary delays in the prosecution of the application.

See Manual of Patent Examining Procedure (MPEP) § 2106(II). As such, the Applicant assumes, based on the goals of patent examination noted above, that the present Office Action has set forth "all reasons and bases" for rejecting the claims.

Claims 1-26 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Application Publication No. 2003/0133420, issued to Haddad (hereinafter, Haddad), in view of U.S. Patent Application Publication No. 2002/0071419, issued to Paranchych, et al. (hereinafter, Paranchych). The Applicant respectfully traverses these rejections at least for the reasons previously set forth during prosecution and at least based on the following remarks.

REJECTION UNDER 35 U.S.C. § 103

In order for a *prima facie* case of obviousness to be established, the Manual of Patent Examining Procedure ("MPEP") states the following:

First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or combine the teaching. Second, there must be a reasonable expectation of success. Finally, **the prior art reference (or references when combined) must teach or suggest all the claim limitations.** The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure.

See MPEP at § 2142, citing *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991) (emphasis added). Further, MPEP § 2143.01 states that "the mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art suggests the desirability of the combination," and that "although a prior art device 'may be capable of being modified to run the way the

apparatus is claimed, there must be a *suggestion or motivation in the reference to do so*” (citing *In re Mills*, 916 F.2d 680, 16 USPQ 2d 1430 (Fed. Cir. 1990)). Moreover, MPEP § 2143.01 also states that the level of ordinary skill in the art cannot be relied upon to provide the suggestion...,” citing *Al-Site Corp. v. VSI Int’l Inc.*, 174 F.3d 1308, 50 USPQ 2d 1161 (Fed. Cir. 1999). Additionally, if a *prima facie* case of obviousness is not established, the Applicant is under no obligation to submit evidence of nonobviousness.

The examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness. If the examiner does not produce a *prima facie* case, the applicant is under no obligation to submit evidence of nonobviousness.

See MPEP at § 2142.

I. The Proposed Combination of Haddad and Paranchych Does Not Render Claims 1-26 Unpatentable

The Applicant turns to the rejection of claims 1-26 as being unpatentable over Haddad in view of Paranchych. The Applicant notes that the proposed combination of Haddad and Paranchych forms the basis for all of the pending rejections.

A. Independent Claim 1

With regard to the rejection of independent claim 1 under 103(a), the Applicant submits that the combination of Haddad and Paranchych does not

disclose or suggest at least the limitation of "sending said determined load of said each one of said plurality of access points to said access device," as recited by the Applicant in independent claim 1.

The Office Action states the following:

Haddad discloses a method for providing load balancing in a hybrid wired/wireless local area network (*Abstract; Page 2, Paragraphs 0002-0004*), the method comprising:

receiving at least one polling message from a network device by at least one of a plurality of access points (*when a connection request is made, communications controller 13 checks the load on the nodes - Page 1, Paragraph 0008; Page 3, Paragraphs 0035 and 0040*);

responsive to said at least one polling message, determining a load on each one of said plurality of access points (*when a connection request is made, communications controller 13 checks the load on the nodes - Page 1, Paragraph 0008; Page 3, Paragraphs 0035 and 0040*); and

sending said determined load of said each one of said access points to said network device (*the controller uses the determined value to determine the load - Page 3, Paragraphs 0035 and 0040*).

However, Haddad discloses that the load balancing procedure is performed by a network controller. Paranchych et al. discloses that the load is monitored by the access device in order to determine the most appropriate access point (*Page 1, Paragraphs 0008 and 0010; Page 2, Paragraphs 0012, 0022-0029*).

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to incorporate the teachings of Paranchych et al. with those of Haddad because this allows for the access

device to aid in the decision of the appropriate access point, making the decision more efficient and reliable.

See the Office Action at pages 3-4 (emphasis added). Referring to Figure 1 of Haddad, Haddad discloses that the software agent 13a, which is part of the communications controller 13, measures the load on each of the nodes 14-16 by measuring the quantity of data addressed to the controller 13, and received from it. See Haddad at paragraph 0035. The communication controller 13 also determines whether or not to provide a newly requested link based on the load of nodes 14-16. See *id.* at paragraph 0040. However, Haddad, including paragraphs 0035 and 0040 of Haddad, does not disclose or suggest that a determined load for each of the access points nodes 14-16) is communicated to an access device (any of the hosts 20-22). The communications controller 13, using the software agent 13a, simply measures the load for nodes 14-16 and determines whether or not a newly requested link may be provided. There is no communication of a determined access point load to an access device.

Furthermore, the Applicant points out that neither Haddad nor Paranchych disclose receiving a polling message and determining a load on each access point, responsive to the polling message, as recited by the Applicant in claim 1.

Paranchych does not overcome the deficiencies of Haddad. Therefore, the Applicant maintains that the combination of Haddad and Paranchych does not

disclose or suggest at least the limitation of "sending said determined load of said each one of said plurality of access points to said access device," as recited by the Applicant in independent claim 1. Accordingly, the proposed combination of Haddad and Paranchych does not render independent claim 1 unpatentable, and a *prima facie* case of obviousness has not been established. The Applicant submits that claim 1 is allowable. Independent claims 9 and 17 are similar in many respects to the method disclosed in independent claim 1. Therefore, the Applicant submits that independent claims 9 and 17 are also allowable over the references cited in the Office Action at least for the reasons stated above with regard to claim 1.

The Applicant also reserves the right to argue additional reasons beyond those set forth above to support the allowability of claims 1, 9, and 17.

B. Rejection of Dependent Claims 2-8, 10-16 and 18-26

Based on at least the foregoing, the Applicant believes the rejection of independent claims 1, 9 and 17 under 35 U.S.C. § 103(a) as being unpatentable over Haddad in view of Paranchych has been overcome and requests that the rejection be withdrawn. Additionally, claims 2-8, 10-16 and 18-26 depend from independent claims 1, 9 and 17, respectively, and are, consequently, also respectfully submitted to be allowable.

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The Applicant also reserves the right to argue additional reasons beyond those set forth above to support the allowability of claims 2-8, 10-16 and 18-26.

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CONCLUSION

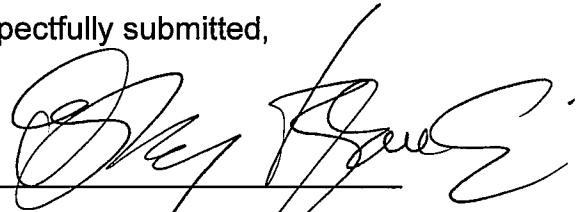
Based on at least the foregoing, the Applicant believes that all claims 1-22 and 24-26 are in condition for allowance. If the Examiner disagrees, the Applicant respectfully requests a telephone interview, and requests that the Examiner telephone the undersigned Attorney at (312) 775-8176.

The Commissioner is hereby authorized to charge any additional fees or credit any overpayment to the deposit account of McAndrews, Held & Malloy, Ltd., Account No. 13-0017.

A Notice of Allowability is courteously solicited.

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Respectfully submitted,



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